

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND

PROVIDING FOR PROJECT WATER SERVICE
FROM _____ DIVISION

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R.O. Draft 9/23-2003

R.O. Draft 8/21-2003

Based on CVP-Wide Form 6/10-2003

CVP M&I Only LTRC

Contract No. _____ - LTR1

17

Water Acquired By The Contractor Other Than

From the United States 35

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1
2 UNITED STATES
3 DEPARTMENT OF THE INTERIOR
4 BUREAU OF RECLAMATION
5 Central Valley Project, California
6

7 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
8 AND

9 _____
10 PROVIDING FOR PROJECT WATER SERVICE
11 FROM DIVISION
12

13 THIS CONTRACT, made this ____ day of _____, 200_, in pursuance
14 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
15 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented,
16 August 4, 1939 (53 Stat. 1187), as amended and supplemented, June 21, 1963 (77 Stat. 68), October 12,
17 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of
18 October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law,
19 between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and
20 _____, hereinafter referred to as the Contractor, a public agency of the State
21 of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of
22 business in California;

23 WITNESSETH, That:

24 EXPLANATORY RECITALS

1 [1st] WHEREAS, the United States has constructed and is operating the Central Valley Project,

2 California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation,

3 municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and

4 distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the

5 Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

6 [2nd] WHEREAS, the United States constructed _____, hereinafter

7 collectively referred to as the _____ [Division/Unit] facilities, which will be used in part for the

8 furnishing of water to the Contractor pursuant to the terms of this Contract; and

9 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to

10 California law for operation of the Project; and

11 [4th] WHEREAS, the Contractor and the United States entered into Contract No.

12 _____, as amended, which established terms for the delivery to the Contractor of Central Valley

13 Project Water from the _____ [Division/Unit] from _____ through

14 _____; and [**Contractor specific issue as to “as amended”**]

15 [5th] [**FOR IRC'S**] WHEREAS, the Contractor and the United States have pursuant to

16 subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into

17 interim renewal contract(s) identified as Contract No(s). _____, the current of

18 which is hereinafter referred to as the Existing Contract, which provided for the continued water service to

the Contractor from _____ through _____; and

[6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim and existing long-term Central Valley Project Water service contracts following completion of appropriate environmental documentation, including a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project Water; and

[7th] WHEREAS, the United States has completed the PEIS and all other appropriate environmental review necessary to provide for long-term renewal of the Existing Contract; and

[8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of California, for water service from the Central Valley Project; and

[9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[10th] [**Contractor Specific**] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Central Valley Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated projected

future demand for water use such that the Contractor has the capability¹ and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and

[11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by urban areas within California for more than fifty (50) years, and is considered by the Contractor as an essential portion of its water supply; and

[12th] WHEREAS, the economies of regions within the Central Valley Project, including the Contractor=s, depend upon the continued availability of water, including water service from the Central Valley Project; and

[13th] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28, 2000, the United States and the State of California adopted a general target of continuously improving Delta water quality for all uses. The CALFED Agencies= target for providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve either: (a) average concentrations at Clinton Forebay and other southern and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health protection using a cost-effective combination of alternative source waters, source control and treatment technologies; and

[14th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to

¹ Contractor Specific issue - This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water.

pursue measures to improve water supply, water quality, and reliability of the Project for all Project purposes; and

[15th] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to achieve repayment of the Central Valley Project as required by law; to guard reasonably against Central Valley Project Water shortages; to achieve a reasonable balance among competing demands for use of Central Valley Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Central Valley Project; and

[16th] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[17th] WHEREAS, the United States and the Contractor are willing to enter into this long-term renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) **Calendar Year** shall mean the period January 1 through December 31, both dates

1 inclusive;

2 (b) ACharges@ shall mean the payments required by Federal Reclamation law in addition
3 to the Rates and Tiered Pricing Components specified in this Contract as determined annually by the
4 Contracting Officer pursuant to this Contract;

5 (c) ACondition of Shortage@ shall mean a condition respecting the Project during any
6 Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total; 2

7 (d) AContracting Officer@ shall mean the Secretary of the Interior's duly authorized
8 representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

9 (e) AContract Total@ shall mean the maximum amount of water to which the Contractor
10 is entitled under subdivision (a) of Article 3 of this Contract;

11 (f) AContractor's Service Area" shall mean the area to which the Contractor is permitted
12 to provide Project Water under this Contract as described in Exhibit AA@ attached hereto, which may be
13 modified from time to time in accordance with Article 35 of this Contract without amendment of this
14 Contract; 3

15 (g) ACSVPIA@ shall mean the Central Valley Project Improvement Act, Title XXXIV of
16 the Act of October 30, 1992 (106 Stat. 4706);

17 (h-i) Omitted;

2 May need to be modified for some divisions, including a definition of interruption of supply.

3 Some Contractors may propose alternate language. Some Contractors may use a legal description, others may use a map.

(j) AFull Cost Rate@shall mean an annual rate, as determined by the Contracting Officer

that shall amortizes the expenditures for construction properly allocable to the Project Irrigation or M&I functions, as appropriate, of facilities in service including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The full-cost rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the RRA;⁴

(k-l) Omitted;

(m) "Irrigation Water" shall mean water made available from the Project that is used primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock;

(n) Omitted;

(o) AMunicipal and Industrial (M&I) Water@shall mean Project Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for

⁴ This definition may be an issue in the M&I Divisional negotiations for certain contractors.

personal enjoyment or water delivered to land holdings operated in units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (m) of this Article;

(p) **AM&I Full Cost Water Rate** shall mean the Full Cost Rate applicable to the delivery of M&I Water;

(q) **AOperation and Maintenance** or **AO&M** shall mean normal and reasonable care, control, operation, repair, replacement (other than Capital replacement), and maintenance of Project facilities;

(r) **AOperating Non-Federal Entity** shall mean the _____, a Non-Federal entity which has the obligation to operate and maintain all or a portion of the _____ [Division/Unit] facilities pursuant to an agreement with the United States, and which may have funding obligations with respect thereto;

(s) **AProject** shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(t) **AProject Contractors** shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

(u) **AProject Water** shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and

conditions of water rights acquired pursuant to California law;

(v) **ARates@** shall mean the payments determined annually by the Contracting Officer in accordance with the then current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

(w) **ARecent Historic Average@** shall mean the most recent five (5) -year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(x) **ASecretary@** shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and through any agency of the Department of the Interior;

(y) **ATiered Pricing Component@** shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

(z) **AWater Delivered@** or **ADelivered Water@** shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;⁵

(aa) **AWater Made Available@** shall mean the estimated amount of Project Water that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

⁵ This language may be modified at the Contractor level.

(bb) AWater Scheduled@ shall mean Project Water made available to the Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(cc) "Year" shall mean the period from and including March 1 of each Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 200_, through February 28 (29), 20___.6

In the event the Contractor wishes to renew the Contract beyond February 28 (29), 20__, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two (2) years prior to the date this Contract expires.

(b) Omitted.

(c) This Contract shall be renewed for a period of up to forty (40) years and thereafter shall be renewed for successive periods of up to forty (40) years each, which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed adoption and application of any revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would limit the term of any subsequent renewal

⁶ To be completed consistent with the term agreed upon with other CVP M&I Long-Term Renewal Contracts.

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- 1 contract with the Contractor for the furnishing of M&I Water to less than forty (40) years.
- 2 (d) The Contracting Officer shall make a determination 10 years after the date of
- 3 execution of this Contract, and every 5 years thereafter during the term of this Contract, of whether a

conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the term of this contract, all authorized project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision of this Article, this contract shall, at the request of the contractor, be converted to a contract under said subsection (c)(1) of Section 9, subject to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under said subsection (c)(1) of Section 9. If the remaining amount of costs that are properly assignable to the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out above, conversion to a contract under said subsection (c)(1) of Section 9.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

1 3. **[Divisional]** (a) During each Year, consistent with all applicable State water rights, permits,
2 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
3 Contracting Officer shall make available for delivery to the Contractor _____ acre-feet of water for M&I
4 purposes. The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be
5 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

6 (b) Because the capacity of the Central Valley Project to deliver Project Water has
7 been constrained in recent years and may be constrained in the future due to many factors including
8 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually
9 receiving the amount of Water set out in subdivision (a) of this Article in any given Year is uncertain. The
10 Contracting Officer's most recent modeling referenced in the PEIS projected that the Contract Total set forth
11 in this Contract will not be available to the Contractor in many years. During the most recent five (5) years,
12 the Recent Historic Average of water made available to the Contractor was _____ acre-feet. Nothing in
13 subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this
14 Contract.

15 (c) The Contractor shall utilize the Project Water in accordance with all applicable legal
16 requirements.

17 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
18 other water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),

1 groundwater banking programs, surface water storage programs, and other similar programs utilizing Project
2 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area
3 which are consistent with applicable State law and result in use consistent with Federal Reclamation law will
4 be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's Water
5 Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That such Water
6 Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a
7 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
8 compliance with Federal Reclamation Law. Groundwater recharge programs, groundwater banking
9 programs, surface water storage programs, and other similar programs utilizing Project Water or other water
10 furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon
11 written approval of the Contracting Officer, which approval will be based upon environmental
12 documentation, Project Water rights, and Project operational concerns. The Contracting Officer will
13 address such concerns in regulations, policies, or guidelines.

14 (e) The Contractor shall comply with requirements applicable to the Contractor in
15 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
16 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within the
17 Contractor's legal authority to implement. The Existing Contract, which evidences in excess of ____ years of
18 diversions for municipal and industrial purposes of the quantities of water provided in subdivision (a) of

Article 3 of this Contract, will be considered in developing an appropriate baseline for the Biological Assessment prepared pursuant to the Endangered Species Act, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.⁷

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

⁷ Specific Contract Issue: The concern over land use authority may be the subject of discussion with individual contractors.

(g) The Contractor may request permission to reschedule for use during the subsequent Year

some or all of the Water Made Available to the Contractor during the current Year referred to as

Acarryover.@ The Contractor may request permission to use during the current Year a quantity of Project

Water which may be made available by the United States to the Contractor during the subsequent Year

referred to as Apreuse.@ The Contracting Officer's written approval may permit such uses in accordance with

applicable statutes, regulations, guidelines, and policies.

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law

to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof and

any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof shall

not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any

renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose

shortages under Article 11 or subdivision (b) of Article 12 of

this Contract or applicable provisions of any subsequent renewal contracts.

(i) Project Water furnished to the Contractor pursuant to this Contract may be

delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract upon written

approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights

8 "Rescheduled" in some divisions. At the present time, rescheduling and preuse is only available to South of Delta and Friant contractors.

1 necessary for the Project and to provide the water available under this Contract. The Contracting Officer
2 shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in
3 administrative proceedings related to the Project Water rights; Provided, however, That the Contracting
4 Officer retains the right to object to the substance of the Contractor's position in such a proceeding;
5 Provided further, that in such proceedings the Contracting Officer shall recognize the Contractor has a legal
6 right under the terms of this Contract to use Project Water.

7 TIME FOR DELIVERY OF WATER

8 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
9 announce the Contracting Officer's expected declaration of the Water Made Available. Such declaration of
10 Project operations will be expressed in terms of both Water Made Available and the Recent Historic
11 Average and will be updated monthly, and more frequently if necessary, based on then-current operational
12 and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be
13 made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate,
14 with relevant supporting information, upon the written request of the Contractor. Concurrently with the
15 declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the
16 updated Recent Historic Average.

17 (b) On or before each March 1 and at such other times as necessary, the Contractor
18 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the

monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at _____ and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

(b) **[Divisional Issue – For Some Divisions Points Of Delivery Specifically Identified]** The Contracting Officer, the Operating Non-Federal Entity, or other appropriate entity as

designated by the Contracting Officer (hereafter ~~Another appropriate entity~~) shall make all reasonable efforts to maintain sufficient flows and levels of water in the _____ Canal to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

(c) The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the United States, the Operating Non-Federal Entity or other appropriate entity at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to making a final determination of the quantity delivered for that period of time.

(e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of

1 damage or claim of damage of any nature whatsoever for which there is legal responsibility, including
2 property damage, personal injury, or death arising out of or connected with the control, carriage, handling,
3 use, disposal, or distribution of such Water Delivered beyond such delivery points, except for any damage or
4 claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents,
5 or assigns, including any responsible Operating Non-Federal Entity, with the intent of creating the situation
6 resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,
7 employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the
8 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible Operating
9 Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated
10 by the United States or responsible Operating Non-Federal Entity; Provided, That the Contractor is not the
11 Operating Non-Federal Entity that owned or operated the malfunctioning facility(ies) from which the damage
12 claim arose.

13 MEASUREMENT OF WATER WITHIN THE SERVICE AREA⁹

14 6. (a) [**Contractor Specific**] By _____[DATE] _____, the
15 Contractor shall ensure that, unless the Contractor establishes an alternative measurement program
16 satisfactory to the Contracting Officer, all surface water delivered for M&I purposes is measured at each
17 M&I service connection. The water measuring devices or water measuring methods of comparable

⁹ Recognize unique circumstances at Contractor level may require negotiation of different language.

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- 1 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be

1 responsible for installing, operating, and maintaining and repairing all such measuring devices and
2 implementing all such water measuring methods at no cost to the United States. The Contractor shall use the
3 information obtained from such water measuring devices or water measuring methods to ensure its proper
4 management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to
5 record water delivered for M&I purposes by customer class as defined in the Contractor's water
6 conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall
7 preclude the Contractor from establishing and collecting any charges, assessments, or other revenues
8 authorized by California law. The Contractor shall include a summary of all its annual surface water
9 deliveries in the annual report described in subdivision (c) of Article 26.

10 (b) **[Contractor Specific]** To the extent the information has not otherwise been
11 provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written
12 report describing the measurement devices or water measuring methods being used or to be used to
13 implement subdivision (a) of this Article and identifying the M&I service connections or alternative
14 measurement programs approved by the Contracting Officer, at which such measurement devices or water
15 measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or
16 methods are not yet being used including a time schedule for implementation at such locations. The
17 Contracting Officer shall advise the Contractor in writing within sixty (60) days as to the adequacy of, and
18 necessary modifications, if any, of the measuring devices or water measuring methods identified in the

Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract¹⁰ shall also comply with the measurement provisions described in subdivision (a) of this Article.

(d) [**Contractor Specific**] The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) [**Contractor Specific**] The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER

7. (a) The Contractor shall pay the United States as provided in this Article for all

¹⁰ Some Contractors may propose alternate date.

Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, wire transfer, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit AB@, as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Components as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit AB.@

1 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
2 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for
3 Project Water for the following Year and the computations and cost allocations upon which those
4 Rates are based. The Contractor shall be allowed not less than two (2) months to review and
5 comment on such computations and cost allocations. By December 31 of each Calendar Year, the
6 Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Components
7 to be in effect for the upcoming Year, and such notification shall revise Exhibit AB@.

8 (c) At the time the Contractor submits the initial schedule for the delivery of Project
9 Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an
10 advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s)
11 set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
12 Contract during the first two (2) calendar months of the Year. Before the end of the first month and before
13 the end of each calendar month thereafter, the Contractor shall make an advance payment to the United
14 States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered
15 pursuant to this Contract during the second month immediately following. Adjustments between advance
16 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the
17 end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to
18 Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during

any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component

1 shall be computed pursuant to Article 20 of this Contract.

2 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or (g) of
3 Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes,
4 associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate
5 for Water Delivered under subdivision (d) of Article 3 of this Contract shall be no more than the otherwise
6 applicable Rate for M&I Water under subdivision (a) of this Article.

7 (f) Payments to be made by the Contractor to the United States under this Contract
8 may be paid from any revenues available to the Contractor.

9 (g) All revenues received by the United States from the Contractor relating to the
10 delivery of Project Water or the delivery of non-Project water through Project facilities shall be allocated
11 and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then
12 current Project ratesetting policies for M&I Water.

13 (h) The Contracting Officer shall keep its accounts pertaining to the administration of the
14 financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so
15 as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon
16 request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor
17 expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water
18 delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to

1 resolve any discrepancies or disputes relating to accountings, reports, or information.

2 (i) The parties acknowledge and agree that the efficient administration of this Contract is
3 their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures
4 used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and allocating
5 payments, other than those set forth in this Article may be in the mutual best interest of the parties, it is
6 expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and
7 procedures for any of those purposes while this Contract is in effect without amending this Contract.

8 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed eighty
9 (80%) percent of the Contract Total, then before the end of the month following the month of
10 delivery the Contractor shall make an additional payment to the United States equal to the applicable
11 Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in
12 excess of eighty (80%) percent of the Contract Total, but less than or equal to ninety (90%) percent
13 of the Contract Total, shall equal the one-half of the difference between the Rate established under
14 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing Component
15 for the amount of Water Delivered which exceeds ninety (90%) percent of the Contract Total shall
16 equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the
17 M&I Full Cost Water Rate.

18 (2) Omitted.

1 (3) For purposes of determining the applicability of the Tiered Pricing

2 Components pursuant to this Article, Water Delivered shall include Project Water that the

3 Contractor transfers to others but shall not include Project Water transferred and delivered to the

4 Contractor.¹¹

5 (k) For the term of this Contract, Rates under the respective ratesetting policies will be

6 established to recover only reimbursable O&M (including any deficits) and capital costs of the Project, as

7 those terms are used in the then-current Project ratesetting policies, and interest, where appropriate, except

8 in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy.

9 Changes of significance in practices which implement the Contracting Officer's ratesetting policies will not be

10 implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature,

11 need, and impact of the proposed change.

12 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the

13 Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or

14 downward to reflect the changed costs of delivery (if any) of the transferred Project Water to the

15 transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy.

16 (m) Omitted.

17 (n) The Contractor asserts that it is not legally obligated to ~~repay~~ pay any Project

¹¹ Divisions/Districts may propose alternative language.

1 deficits ~~or deficit-related interest charges~~ claimed by the United States to have accrued as of the date of this
2 Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not
3 waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the
4 execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate
5 administrative or judicial forums: (1) the existence, the computation, or imposition of any deficit charges
6 accruing during the term of the Existing Contract; (2) interest accruing on any such deficits; (3) the inclusion
7 of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made
8 by the Contractor under its Existing Contract; and (5) the application of such payments in the Rates. The
9 Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial
10 ruling in favor of any other Project M&I contractor on any of these issues, and credits for payments
11 heretofore made, provided that the basis for such ruling is applicable to the Contractor.¹²

12 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

13
14 8. Omitted.

15 SALES, TRANSFERS, OR EXCHANGES OF WATER

16 9. (a) The right to receive Project Water provided for in this Contract may be sold,
17 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such
18 sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable

¹² May be deleted at Contractor's request.

1 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract
2 may take place without the prior written approval of the Contracting Officer, except as provided for in
3 subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent all
4 appropriate environmental documentation, including but not limited to documents prepared pursuant to the
5 National Environmental Policy Act and the Endangered Species Act. Such environmental documentation
6 should include, as appropriate, an analysis of groundwater impacts and economic and social effects, including
7 environmental justice, of the proposed water transfers on both the transferor and transferee.

8 (b) In order to facilitate efficient water management by means of water transfers of the
9 type historically carried out among Project Contractors located within the same geographical area and to
10 allow the Contractor to participate in an accelerated water transfer program during the term of this Contract,
11 the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation including,
12 but not limited to documents prepared pursuant to the National Environmental Policy Act and the
13 Endangered Species Act analyzing annual transfers within such geographical areas and the Contracting
14 Officer shall determine whether such transfers comply with applicable law. Following the completion of the
15 environmental documentation, such transfers addressed in such documentation shall be conducted with
16 advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting
17 Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be
18 reviewed every five (5) years and updated, as necessary, prior to the expiration of the then existing five (5) -

year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

(d) [Area of Origin – American River Division Only]

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than One Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the option of the Contractor, may be credited against amounts to become due to the United

1 States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
2 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project
3 Water supply provided for herein. All credits and refunds of overpayments shall be made within thirty (30)
4 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in
5 response to the notice to the Contractor that it has finalized the accounts for the Year in which the
6 overpayment was made.

7 (b) All advances for miscellaneous costs incurred for work requested by the Contractor
8 pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the work has been
9 completed. If the advances exceed the actual costs incurred, the difference will be refunded to the
10 Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the
11 additional costs pursuant to Article 25 of this Contract.

12 TEMPORARY REDUCTIONS--RETURN FLOWS

13 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
14 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or renewals
15 thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable
16 efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

17 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
18 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes

of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right as seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area¹³ by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable

¹³ Divisions may propose alternate language.

1 means to guard against a Condition of Shortage in the quantity of water to be made available to the
2 Contractor pursuant to this long-term renewal Contract. In the event the Contracting Officer determines that
3 a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
4 determination as soon as practicable.

5 (b) If there is a Condition of Shortage because of errors in physical operations of the
6 Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the
7 Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this
8 Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any
9 damage, direct or indirect, arising therefrom.

10 (c) Omitted.

11 (d) Project Water furnished under this Contract will be allocated in accordance with the
12 then-existing Project M&I Water Shortage Policy. Such policy shall be amended, modified, or superseded
13 only through a public notice and comment procedure.

14 (e) By entering into this Contract, the Contractor does not waive any legal rights or
15 remedies it may have to file or participate in any administrative or judicial proceeding contesting (i) the
16 sufficiency of the manner in which any Project M&I Water Shortage Policy adopted after the effective date
17 of this Contract was promulgated; (ii) the substance of such a policy; or (iii) the applicability of such a policy.
18 By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it

may then have to assert in such a proceeding.

UNAVOIDABLE GROUNDWATER PERCOLATION

13. Omitted.

RULES AND REGULATIONS¹⁴

14. The parties agree that the delivery of M&I Water or use of Federal facilities pursuant to this Contract is subject to the applicable provisions of Federal Reclamation law, ~~as amended and supplemented,~~ and ~~the~~ any applicable rules and regulations promulgated by the Secretary of the Interior under ~~Federal~~ Reclamation such law.

WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER¹⁵

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or

¹⁴ Contractor Specific Issue - This may need to be modified on an individual contractor basis. Some contractors may be precluded by law to agreeing to all or part of this Article.

¹⁵ Some Contractors may request tailored language regarding water quality.

other existing Federal laws. The United States is under no obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract.

The United States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

(b) The O&M of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer.

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

17. (a) Omitted.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States, may be stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate environmental documentation, with the approval of the Contracting Officer and the execution of any contract determined by the Contracting Officer to be necessary, consistent with the following provisions:

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor's Service Area, subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate as determined by the CVP Ratesetting Policy and the Reclamation Reform Act of 1982, each as amended,

1 modified or superceded from time to time. In addition, if electrical power is required to pump non-
2 Project water through the facilities, the Contractor shall be responsible for obtaining the necessary
3 power and paying the necessary charges therefor.

4 (2) Delivery of such non-Project water in and through Project facilities shall only
5 be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
6 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
7 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to
8 any other Project water service contractors; or (iv) interfere with the physical maintenance of the
9 Project facilities.

10 (3) Neither the United States nor the Operating Non-Federal Entity shall be
11 responsible for control, care or distribution of the non-Project water before it is introduced into or
12 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
13 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
14 agents, and employees, from any claim for damage to persons or property, direct or indirect, arising
15 out of or relating to the Contractor's or its officers', employees', agents' or assigns', act of (i)
16 extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
17 into Project facilities.

18 (4) Diversion of such non-Project water into Project facilities shall be consistent

1 with all applicable laws, and if involving groundwater, consistent with any applicable groundwater
2 management plan for the area from which it was extracted.

3 (5) After Project purposes are met, as determined by the Contracting Officer,
4 the United States and the Contractor shall share priority to utilize the remaining capacity of the
5 facilities declared to be available by the Contracting Officer for conveyance and transportation of
6 non-Project water prior to any such remaining capacity being made available to non-Project
7 contractors. **[Divisional Issue – Divisions May Seek Language Providing For Wheeling And**
8 **Non-Project Water Pursuant To Cvpia Section 3408(C), Etc.]**

9
10 OPINIONS AND DETERMINATIONS

11 18. (a) Where the terms of this Contract provide for actions to be based upon the opinion
12 or determination of either party to this Contract, said terms shall not be construed as permitting such action
13 to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties,
14 notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and
15 appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
16 opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of
17 Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable
18 under Federal law to any opinion or determination implementing a specific provision of Federal law
19 embodied in statute or regulation.

20 (b) The Contracting Officer shall have the right to make determinations necessary to

administer this Contract that are consistent with the expressed and implied provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making authority for all actions, opinion, and determinations to be made by the respective party.

(b) Within one hundred twenty (120) days following the effective date of this Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of this process shall be to provide, to the extent practicable, the means of mutual communication and interaction regarding significant decisions

1 concerning Project operation and management on a real-time basis.

2 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract, it is
3 the intent of the Secretary to improve water supply reliability. To carry out this intent:

4 (1) The Contracting Officer will, at the request of the Contractor, assist in the
5 development of integrated resource management plans for the Contractor. Further, the Contracting
6 Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water
7 supply, water quality, and reliability.

8 (2) The Secretary will, as appropriate, pursue program and project
9 implementation and authorization in coordination with Project Contractors to improve the water
10 supply, water quality, and reliability of the Project for all Project purposes.

11 (3) The Secretary will coordinate with Project Contractors and the State of
12 California to seek improved water resource management.

13 (4) The Secretary will coordinate actions of agencies within the Department of
14 the Interior that may impact the availability of water for Project purposes.

15 (5) The Contracting Officer shall periodically, but not less than annually, hold
16 division level meetings to discuss Project operations, division level water management activities, and
17 other issues as appropriate.

18 (d) Without limiting the contractual obligations of the Contracting Officer under the other

1 Articles of this Contract, nothing in this Article shall be construed to limit or constrain the Contracting
2 Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested
3 stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of
4 structures or facilities.

5 CHARGES FOR DELINQUENT PAYMENTS

6 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on
7 delinquent installments or payments. When a payment is not received by the due date, the Contractor shall
8 pay an interest charge for each day the payment is delinquent beyond the due date. When a payment
9 becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional
10 costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or
11 more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the
12 payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt
13 collection services associated with a delinquent payment.

14
15 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
16 Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate
17 of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of
18 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed
19 for the duration of the delinquent period.

20
21 (c) When a partial payment on a delinquent account is received, the amount received
22 shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and
23 finally to the overdue payment.

24 EQUAL OPPORTUNITY

25
26
27 21. During the performance of this Contract, the Contractor agrees as follows:

28
29 (a) The Contractor will not discriminate against any employee or applicant for
30 employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative
31 action to ensure that applicants are employed, and that employees are treated during employment, without

1 regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the
2 following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
3 termination, rates of payment or other forms of compensation; and selection for training, including
4 apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants
5 for employment, notices to be provided by the Contracting Officer setting forth the provisions of this
6 nondiscrimination clause.

7
8 (b) The Contractor will, in all solicitations or advertisements for employees placed by or
9 on behalf of the Contractor, state that all qualified applicants will receive consideration for employment
10 without discrimination because of race, color, religion, sex, or national origin.

11
12 (c) The Contractor will send to each labor union or representative of workers with
13 which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by
14 the Contracting Officer, advising the said labor union or workers' representative of the Contractor's
15 commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of
16 the notice in conspicuous places available to employees and applicants for employment.

17
18 (d) The Contractor will comply with all provisions of Executive Order No. 11246 of
19 September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of
20 Labor.

21
22 (e) The Contractor will furnish all information and reports required by said amended
23 Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and
24 will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor
25 for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

26
27 (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of
28 this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated,
29 or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government
30 contracts in accordance with procedures authorized in said amended Executive Order, and such other
31 sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation,
32 or order of the Secretary of Labor, or as otherwise provided by law.

33
34 (g) The Contractor will include the provisions of paragraphs (a) through (g) in every
35 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor
36 issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding

upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

22. (a) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.

(c) With respect to subdivision (b) of this Article, the Contractor shall have no obligation to require advance payment for water rates which it levies.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or

1 be otherwise subjected to discrimination under any program or activity receiving financial assistance from the
2 Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any measures
3 necessary to implement this obligation, including permitting officials of the United States to inspect premises,
4 programs, and documents.
5

6 (c) The Contractor makes this agreement in consideration of and for the purpose of
7 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
8 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
9 installment payments after such date on account of arrangements for Federal financial assistance which were
10 approved before such date. The Contractor recognizes and agrees that such Federal assistance will be
11 extended in reliance on the representations and agreements made in this Article, and that the United States
12 reserves the right to seek judicial enforcement thereof.
13

14 PRIVACY ACT COMPLIANCE
15

16 24. Omitted.
17

18 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

19 25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the
20 Contractor shall pay to the United States, within sixty (60) days after receipt of a bill and detailed statement
21 submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the
22 United States for work requested by the Contractor associated with this Contract plus indirect costs in
23 accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in
24 this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall
25 not apply to costs for routine contract administration.
26

27 WATER CONSERVATION

28 26. (a) Prior to the delivery of water provided from or conveyed through Federally

constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program shall contain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently works with the Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor immediately begins implementing its water conservation and efficiency program in accordance with the time schedules therein.

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor shall implement the Best Management Practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer

1 to be inappropriate for the Contractor.

2 (c) The Contractor shall submit to the Contracting Officer a report on the status of its
3 implementation of the water conservation plan on the reporting dates specified in the then existing
4 conservation and efficiency criteria established under Federal law.

5 (d) At five (5) -year intervals, the Contractor shall revise its water conservation plan to
6 reflect the then current conservation and efficiency criteria for evaluating water conservation plans established
7 under Federal law and submit such revised water management plan to the Contracting Officer for review and
8 evaluation. The Contracting Officer will then determine if the water conservation plan meets Reclamation's
9 then current conservation and efficiency criteria for evaluating water conservation plans established under
10 Federal law.

11 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall be
12 described in the Contractor's water conservation plan.

13 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

14 27. Except as specifically provided in Article 17 of this Contract, the provisions of this Contract
15 shall not be applicable to or affect non-Project water or water rights now owned or hereafter acquired by
16 the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be
17 considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or
18 curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or

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1 has available under any other contract pursuant to Federal Reclamation law.

2 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY¹⁶

3 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and

¹⁶ Include where applicable.

1 responsibility for funding a portion of the costs of such O&M, have been transferred to the Operating Non-
2 Federal Entity by separate agreement between the United States and the Operating Non-Federal Entity.
3 That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the
4 United States hereunder.

5 (b) The Contracting Officer has previously notified the Contractor in writing that the
6 O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating
7 Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or
8 to any successor approved by the Contracting Officer under the terms and conditions of the separate
9 agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of
10 this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which
11 the Operating Non-Federal Entity or such successor determines, sets, or establishes for the O&M of the
12 portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or such
13 successor. Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
14 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates,
15 Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal Entity collects
16 payments on behalf of the United States in accordance with the separate agreement identified in subdivision
17 (a) of this Article.

18 (c) For so long as the O&M of any portion of the Project facilities serving the

Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by the Operating Non-Federal Entity or its successor.

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit AB@ which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised Exhibit AB@ directly to the United States in compliance with Article 7 of this Contract.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

29. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

BOOKS, RECORDS, AND REPORTS

30. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way agreements; water use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable

1 Federal laws and regulations, each party to this Contract shall have the right during office hours to examine
2 and make copies of the other party's books and records relating to matters covered by this Contract.

3
4 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records,
5 or other information shall be requested from the Contractor by the Contracting Officer unless such books,
6 records, or information are reasonably related to the administration or performance of this Contract. Any
7 such request shall allow the Contractor a reasonable period of time within which to provide the requested
8 books, records, or information.

9 (c) At such time as the Contractor provides information to the Contracting Officer
10 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the Operating
11 Non-Federal Entity.

12 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

13 31. (a) The provisions of this Contract shall apply to and bind the successors and assigns of
14 the parties hereto, but no assignment or transfer of this Contract or any right or interest therein shall be valid
15 until approved in writing by the Contracting Officer.

16
17 (b) The assignment of any right or interest in this Contract by either party shall not
18 interfere with the rights or obligations of the other party to this Contract absent the written concurrence of
19 said other party.

20 (c) The Contracting Officer shall not unreasonably condition or withhold approval of any
21 proposed assignment.

SEVERABILITY

32. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

33. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to the

Contractor commencing any legal action, or the Contracting Officer referring any matter to Department of Justice, the party shall provide to the other party thirty (30) days= written notice of the intent to take such action; Provided, That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR-S SERVICE AREA

35. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area ~~or boundaries~~, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise, except upon the Contracting Officer's written consent.

(b) Within thirty (30) days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay

for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

FEDERAL LAWS

36. By entering into this Contract, the Contractor does not waive its rights to contest the validity or application in connection with the performance of the terms and conditions of this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this Contract unless and until relief from application of such Federal law or regulation to the implementing provision of the Contract is granted by a court of competent jurisdiction.

NOTICES

37. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, _____, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors/City Council of the _____. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CONFIRMATION OF CONTRACT

38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

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1
2 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year
3 first above written.
4

5 THE UNITED STATES OF AMERICA
6
7
8

9 By: _____
10 Regional Director, Mid-Pacific Region
11 Bureau of Reclamation
12
13
14

15 [NAME OF CONTRACTOR]
16
17
18

19 By: _____
20 President of the Board of Directors
21

22 Attest:
23
24
25

26 By: _____
27 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Service Area]

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EXHIBIT B

[Initial Rates and Charges]